IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 519 OF 2003

IN

SUM.SUIT NO.3589 OF 2002

Manubhai H. Patel .. Plaintiff

vs.

Lalit Constructions

& Ors. .. Defendants.

Mr. Hemant Seth for plaintiff.

Mr. S.I. Jaykar for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 26th SEPTEMBER, 2005.

P.C.

. The present suit is filed for the recovery of a sum of Rs. 38,21,130/- together with interest on Rs. 25,00,000/-. The learned advocate appearing for the defendants has raised three defences. Firstly it is contended that the summons for judgment is not maintainable because a fresh summons for judgment is not taken out after the amendment of the plaint. The defence is totally bogus. Merely

the amendment of the plaint does not require under any law to take out fresh summons for judgement. The second defence raised is that in the promissory note use the words "value required by cheque today" and, therefore, there is no consideration. The said defence is also equally bogus and without any merit. There is a presumption under the Negotiable Instruments Act as to the consideration received in respect of the said negotiable instrument. The promissory note being a negotiable instrument the said presumption will apply in the present case as well. The third and last contention raised is that the real and true transaction between the parties was in respect of certain contract entered into by and between plaintiff and the defendant jointly. My attention has been drawn to the contract document in support of the aforesaid contention. After perusing the said document, I do not find any merit in the said contention. In that view of the matter, I do not find any merit in the defences raised. However, with a view to give an opportunity to the defendants to defend the suit I direct the defendants to deposit Rs. 35 lacs in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till

further orders from this Court.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.